

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Squad #4	CCRB Case #: 201501713	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/02/2015 3:00 PM	Location of Incident: § 87(2)(b)	Precinct: 110	18 Mo. SOL 9/2/2016	EO SOL 9/2/2016	
Date/Time CV Reported Mon, 03/02/2015 3:39 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/11/2015 10:12 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Vacchio	23877	947563	110 PCT
2. POM Michael Carrieri	31971	930412	110 PCT
3. An officer			110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Paul Lappner	02095	928620	110 PCT
2. POM Gregory Denk	08358	948013	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Vacchio	Abuse: PO Brian Vacchio stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.POM Michael Carrieri	Abuse: PO Michael Carrieri stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM Michael Carrieri	Abuse: PO Michael Carrieri searched the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.POM Brian Vacchio	Abuse: PO Brian Vacchio searched the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
E. An officer	Abuse: An officer searched the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On March 2, 2015, § 87(2)(b) § 87(2)(b) filed this complaint with IAB by phone generating original log #5465. This case was received by the CCRB on March 11, 2015, under log #15-5849. § 87(2)(b) § 87(2)(b) complained that he was stopped by plainclothes officers in an unmarked car while driving in the vicinity of § 87(2)(b) in Queens, identified as PO Brian Vacchio and PO Michael Carrieri of the 110th Precinct Anti-Crime unit (**Allegations A and B**). After being asked to exit the vehicle, PO Carrieri searched § 87(2)(b) § 87(2)(b)'s car (**Allegation C**). § 87(2)(b) § 87(2)(b) further alleged that PO Vacchio searched his car (**Allegation D**). The officers' supervisor, Sgt. Paul Lappner, subsequently came to the scene and an unidentified officer conducted a further search of the vehicle (**Allegation E**).

(original IAB complaint encl. 4a-d; CCRB complaint encl. 5a-b; CCRB statement encl. 6a-f)

Mediation, Civil and Criminal Histories

- § 87(2)(b) § 87(2)(b) rejected mediation.
- A FOIL request to the Office of the Comptroller was sent on April 23, 2015, seeking any notice of claim that § 87(2)(b) § 87(2)(b) filed in regards to this case (encl. 17a). This will be added to the case file upon receipt.
- § 87(2)(b) § 87(2)(b)
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Civilian and Officer CCRB Histories

- § 87(2)(b) § 87(2)(b) previously filed CCRB #201204829 in which he alleged an officer spoke discourteously to him. This was closed as complainant uncooperative (encl. 3a).
- This is the first CCRB complaint filed against PO Vacchio in his six-year tenure (encl. 2a).
- PO Carrieri has no substantiated allegations against him in his eleven-year tenure (encl. 2b). There is no pattern of allegations consistent with those raised here.

Finding and Recommendations

Officer Identification

§ 87(2)(b) § 87(2)(b) described the driver of the RMP as a white male in his 30s, with brown hair and a beard, standing 5'6; he described the passenger as a white male in his 30s, standing 5'10. Officer testimony was consistent that PO Vacchio was the driver and PO Carrieri was the recorder, and they fit their descriptions perfectly; PO Vacchio had a beard when he appeared at the CCRB. § 87(2)(b) § 87(2)(b) alleged that the passenger, PO Carrieri, searched his vehicle. PO Carrieri admitted to doing this action, so **Allegation C** is pleaded against PO Carrieri.

§ 87(2)(b) § 87(2)(b) alleged that PO Vacchio also searched his car (**Allegation D**), but also alleged that one of the officers who arrived as backup briefly searched his car as well. It is undisputed that Sgt. Lappner and PO Denk responded to the scene. § 87(2)(b) § 87(2)(b) described this officer who conducted a third search as a Hispanic male, standing 5'4. Both Sgt. Lappner and PO Denk are white males, and 5'10 and 5'8 respectively. § 87(2)(b) § 87(2)(b) could not provide detailed descriptions of these two officers or their positions in the vehicle, and could not describe the fourth officer at all

by race, age, height, or other details. All officers denied that this search occurred, and thus it is not possible to determine which officer this allegation be alleged against. **Allegation E** is therefore pleaded against “An officer” of the 110th Precinct.

§ 87(2)(b), § 87(4-b), § 87(2)(g)

Recommendations

Allegations Not Pleaded

- **Frisk:** Both PO Vacchio and PO Carrieri stated that they frisked § 87(2)(b) and were consistent in their reasons for doing so, the parts of § 87(2)(b) 's body frisked, and the chronological point of the frisk. However, § 87(2)(b) alleged that he was frisked by only one officer, PO Vacchio, and he verbally consented to be frisked. As it is not alleged by § 87(2)(b) no frisk is pleaded against PO Carrieri, and as he consented, no frisk is pleaded against PO Vacchio.
- **Search of Person:** § 87(2)(b) alleged that PO Carrieri removed a jacket from the back of his car, said “who smokes weed,” and searched the pockets of this jacket. As this jacket was located in the car and PO Carrieri admitted to the search, this is subsumed in **Allegation C**, search of vehicle.

Allegation A—Abuse of Authority: PO Brian Vacchio stopped the car in which § 87(2)(b) was an occupant.

Allegation B—Abuse of Authority: PO Michael Carrieri stopped the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) § 87(2)(b) alleged that he committed no traffic violations in the time immediately preceding being pulled over. He explained that he realized that officers were behind him despite being in an unmarked car, so he was particularly careful with his driving.

Both PO Vacchio and PO Carrieri testified as well as documented in their memo books (memo books encl. 7b-d and 8b-c; testimony encl. 7e-f and 8d-e respectively) that § 87(2)(b) rolled through a stop sign, and were consistent with § 87(2)(b) in describing themselves as following § 87(2)(b) for several blocks after the violation before effecting the traffic stop. Both officers stated they intended to issue a summons, but a higher-priority call came over the radio so they released § 87(2)(b) with a warning. This higher-priority call is documented in PO Vacchio's memo book (encl. 7d) and in the SPRINT index (encl. 13b).

If § 87(2)(b) had been issued a summons, this allegation would be not pleaded as it would constitute a summons dispute. As no summons was issued, the fact remains in dispute whether § 87(2)(b) committed a VTL offense that was observed by the officers. Both § 87(2)(b) and the officers provided credible statements that were fairly consistent with one another. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C—Abuse of Authority: PO Michael Carrieri searched the car in which § 87(2)(b) was an occupant.

It is undisputed that PO Carrieri entered and searched the reachable areas of § 87(2)(b) 's car as well as closed containers while § 87(2)(b) stood outside at the rear of the car. There was no one else in the car at the time. § 87(2)(b) alleged, and PO Carrieri confirmed, that PO Carrieri

searched under the seats, in the open center console, and in the unlocked glove compartment. No contraband was found during this search.

PO Carrieri stated that he searched the car because he had “reasonable suspicion” due to § 87(2)(b) § 87(2)(b) furtive movements and uncooperative demeanor. PO Carrieri described these furtive movements as § 87(2)(b) § 87(2)(b) reaching “somewhere” in the passenger’s side of the car in the moments between rolling through the stop sign and when the officers activated their lights to pull him over. PO Carrieri stated that the “furtiveness” of the movement was the fact that he and PO Vacchio could not see what § 87(2)(b) § 87(2)(b) was doing with his hand. More explicitly, neither PO Carrieri nor PO Vacchio could describe what, if anything, § 87(2)(b) § 87(2)(b) was reaching for or where exactly near the passenger’s seat he was reaching. This alleged furtive movement was observed by the officers, who were in an unmarked vehicle and were dressed in plainclothes, prior to any police contact, including the initiation of the stop via lights and siren.

In order to search closed containers within a vehicle, probable cause of a crime must exist. Absent probable cause, an officer is permitted to search the “reachable” area of a vehicle only when articulable facts showing a “substantial likelihood” of a weapon being present in the vehicle exist. *People v. Torres*, 74 N.Y.2d 224 (1989) (encl. 1a-h). The observation of a mere furtive reach alone will not provide sufficient basis to search a vehicle. *People v. Chann*, 221 A.D.2d 155 (1995 – 1st Dept.) (encl. 1i); *People v. Mouzon*, 2011 NY Slip Op 51080U (2011) (encl. 1j-n).

§ 87(2)(b), § 87(2)(g)

Allegation D—Abuse of Authority: PO Brian Vacchio searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) § 87(2)(b) alleged that after PO Carrieri completed his search of his car, PO Vacchio conducted a lighter and briefer search of his car; § 87(2)(b) § 87(2)(b) could not exactly recall when the additional two officers arrived as backup, but he also alleged that one of these officers also conducted a yet briefer search of the car, looking under the seats and not removing anything.

PO Vacchio and PO Carrieri denied that PO Vacchio had any role in the search of the vehicle. Sgt. Lappner had no recollection of any part of this incident (encl. 10a-e), and his operator PO Denk did not recall any officer searching the vehicle to his knowledge (encl. 9a-e).

§ 87(2)(b), § 87(2)(g)

Allegation E—Abuse of Authority: An officer searched the car in which § 87(2)(b) § 87(2)(b) was an occupant.

§ 87(2)(b)'s vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

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Team: _____

Investigator: _____

Signature

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Date _____

Supervisor: _____

Title/Signature

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Date

Reviewer: _____

Title/Signature

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Date _____

Reviewer: _____

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Date _____